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TRADE SUMMARY

The U.S. trade surplus with Australia was \$6.5 billion in 1999, \$27 million lower than in 1998. U.S. merchandise exports to Australia were \$11.8 billion, down \$119 million (almost 1.0 percent) from 1998. Australia was the United States 15th largest export market in 1999. U.S. imports from Australia totaled \$5.3 billion in 1999, a 1.7 percent decrease from 1998. The stock of U.S. foreign direct investment in Australia was \$33.7 billion in 1998, 12.6 percent higher than in 1997. U.S. direct investment in Australia is largely concentrated in manufacturing and finance.

IMPORT POLICIES

Tariffs

Although Australia did not support the “zero for zero” on paper and plasterboard items in the Uruguay Round, Australia has since supported tariff elimination in the entire forest products sector through the Accelerated Tariff Liberalization initiative in the WTO. Australia did not adhere to the “zero for zero” agreement for distilled spirits (Australia is the third largest market for U.S. exports of distilled spirits).

STANDARDS, TESTING, LABELING AND CERTIFICATION

Sanitary and Phytosanitary Controls

The Government of Australia limits agricultural imports through quarantine and health restrictions, in some cases apparently without the necessary risk assessment to provide the WTO-required scientific basis for such restrictions. As the result of an independent review of its animal and plant quarantine policies, Australia has implemented a formalized process for conducting import risk assessments (IRA). The new process provides for extensive stakeholder consultations and appeals, with 18 months stated as the length of time required to carry out a non-routine risk analysis. The United States was concerned that many

commodities that had been discussed previously would have to start the review process all over again under the new rules, and indeed this has been true in all cases except one.

The WTO found Australia’s prohibition on the importation of all fresh, chilled, and frozen salmon to be inconsistent with Australia’s obligations under the WTO. In February 1999, the WTO ruled that Australia had until July 1999 to bring its regime into conformity with its WTO obligations (i.e., open its market). Australia responded by carrying out an IRA released in July 1999, allowing for importation with certain restrictions. At the time of this report, the United States is in the process of determining next steps.

Australia prohibits poultry imports (with the exception of cooked poultry) without having completed the required WTO risk assessments. However, the Australian Quarantine and Inspection Service (AQIS) has recently started the process of undertaking an import risk analysis of uncooked chicken meat. A ruling is expected during 2000. The Australian Government has lifted the ban on cooked chicken imports from the United States, Denmark and Thailand, but with recommended temperature/time treatment requirements so extreme as to effectively prohibit imports. A ban also exists on cooked U.S. pork (except canned products), but a generic IRA is presently in process. The United States has raised these issues at the highest levels of the Australian government and will continue to do so at all levels and in all appropriate fora.

Prior to 1994, imported feed grains were restricted from entering Australia, ostensibly due to phytosanitary concerns. During the 1994-95 drought the United States obtained approval to export feed grains to Australia to supplement domestic production. Since then, the requirement that all feed grains be steam-treated or processed in an alternative satisfactory manner at the port of entry has made further importation commercially unviable. Australia permits the importation of specified feed grains for processing in metropolitan areas under strict quarantine conditions, although facilities are currently available only at the Port of Brisbane.

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An import risk assessment on maize is currently underway. The draft IRA issued during 1999 was even more restrictive; however, an extensive response submitted by the United States could see changes to the draft IRA. A second draft IRA will be issued for stakeholder input before a final IRA is published.

Phytosanitary regulations also prohibit or severely limit the entry of many fruits from the United States, including Florida citrus, grapes, blueberries, stone fruit, apples and pears. After receiving U.S. cherries from California in 1996, the Australian Government decided to revisit the pest risk analysis because of the amount of cherries which had to be treated upon arrival. U.S. cherries from 13 counties in California were again accepted in 1998. Australia is studying Pacific Northwest cherries to determine if the pest and disease situation there is similar enough to California to preclude the need for a separate IRA. The United States is waiting for the release of Australia's risk analyses on Florida citrus. The Government of Australia has said that it is waiting for additional data on the epidemiology of citrus canker from Florida before it can release the IRA on Florida citrus. Australia will begin the IRA for U.S. stone fruit early in 2000 once it receives additional data from the California tree fruit industry. A U.S. industries estimate of the market opportunities which could arise from Australia's removal of its restrictions on fresh fruit is \$20-\$75 million. Industry marketers of Florida citrus estimate that export sales of Florida citrus would exceed \$3 million.

On January 13, 2000, Australia released its final import risk assessment (IRA) on California table grapes. The IRA determined that California table grapes will meet Australia's phytosanitary requirements if imported under one of the two fumigation options specified in the IRA. Option A allows import throughout the entire year if the grapes are fumigated in California. Option B allows imports from June to September to specified ports when the grapes are fumigated upon arrival. Before trade begins there is a thirty-day appeal period where a stakeholder may appeal the procedure Australia followed in

reaching this decision. In the event of an appeal, Australia would form an Appeal Panel to determine the merits of the appeal. The Australian Government received 10 appeals, whose merits the Appeals Panel approved. AQIS has 45 days to respond to the issues raised in the four areas addressed in the complaints: environment, economics, evaluation of the systems approach, and efficacy treatments. If AQIS addresses the appeals within 45 days and the new protocols for imports are established, shipments of California grapes may still begin this season. The United States will continue to encourage the Australian government to act expeditiously in accordance with its timetable.

The U.S. industry estimates that Australia will import between one and one and a half million boxes per year, placing Australia in the top five markets for California grapes. The estimated value for those shipments is between \$12 and \$19 million.

Agri-Biotech Products

A new mandatory standard for foods produced using biotechnology came into effect in May 1999. The standard prohibits the sale of food produced using gene technology, unless the food has been assessed by the Australia New Zealand Food Authority (ANZFA) and listed in the standard. The Australia New Zealand Food Standards Council has directed ANZFA to require labeling for virtually all foods produced using biotechnology and draft labeling regulations have been in place since mid-1999. Implementation of any labeling regime has been postponed, however, pending an assessment of cost and other factors. Labeling regulations are expected to be finalized during 2000.

The U.S. Government will be monitoring both of these programs to determine whether they are being implemented in a manner that is consistent with Australia's international obligations.

GOVERNMENT PROCUREMENT

The United States continues to urge Australia to join and adhere to the WTO Agreement on

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Government Procurement. Australia has supported multilateral efforts to achieve a transparency agreement in the WTO.

EXPORT SUBSIDIES

Australia maintains several programs intended to enhance Australian exports. These programs include the following:

Export Market Development Grants

(EMDG): This scheme encourages Australian exporters to develop overseas markets for goods, services, tourism, industrial property rights and technology of substantially Australian origin. EMDG scheme grants are available only to Australian firms, to partially reimburse eligible expenditures (primarily marketing costs) while developing overseas markets. Funding for the EMDG scheme was recently extended to the 2001-02 fiscal year.

Export Facilitation Scheme: Under the terms of the EFS, manufacturers of automotive vehicles and components receive subsidies based on the level of exports of specified automotive products. The subsidies are in the form of duty rebate “credits” which recipients can, in turn, use to offset their duty liability on imports of specified automotive products. In general, the level of the subsidy is determined based on the sales value of the eligible exports, but the calculation is also done in a way which rewards domestic value-added. The greater the value of any qualifying exported product, the greater the import credit granted. Significantly, however, there is no requirement that the imported products be physically incorporated into the exported product. Imports of finished vehicles for consumption on the Australian market are fully eligible for duty rebates under this scheme. The subsidy benefits are freely transferable and may be sold among participants in the program. It is true that the benefits are progressively reduced each year in line with the annual 2.5 percent tariff reduction on passenger motor vehicles. Nonetheless, the level of benefits will remain significant in the year 2000, when Australia’s duty on imported vehicles and

components will be 15 percent. The EFS is scheduled to terminate on December 31, 2000.

The EFS was replaced on October 13, 1999 by the Automotive Competitiveness and Investment Scheme (ACIS). The ACIS is scheduled to begin on January 1, 2001 and will run for five years. Like its EFS predecessor, the ACIS benefits will be in the form of transferrable import duty credits. In contrast to the EFS, the ACIS makes no overt export contingency references. The U.S. Government will pay careful attention to the Australian Government’s eventual implementation of this program.

As described by the Australian Government, the ACIS will reward passenger motor vehicle manufacturers for performance in production and investment in new productive capital assets. Component manufacturers and service providers will also be rewarded for investment in new productive capital assets and in technology development. The value of assistance offered to an individual firm under the ACIS will be limited to five percent of its sales of eligible products or services produced in Australia in the previous year.

Textiles, clothing and footwear (TCF) import credit scheme: Similar to the automotive export facilitation scheme, the TCF import credit scheme grants duty rebate credits to Australian exporters of TCF products, entitling them to a reduction in import duties on eligible TCF imports. The value of import credits granted is calculated as 15 percent of the domestic value-added in TCF exports. Import credits are freely transferable and may be sold among participants in the program. The scheme is scheduled to terminate on June 30, 2000.

The Australian Government will commence its TCF 2000 development package on July 1, 2000, which will run for five years. For Australian-based firms, the package will provide a rebate of up to 20 percent of eligible investment expenditure, reimbursement of up to 45 percent of expenditure on eligible innovation-related activities, and payment of up to five percent of TCF-value-added by firms in

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Australia. All firms engaged in textiles, clothing, footwear and leather manufacturing in Australia will be eligible to apply.

Automotive Leather: A World Trade Organization dispute settlement panel issued a report finding that Australia failed to comply with the WTO Dispute Settlement Body's ruling that Australia withdraw a prohibited export subsidy bestowed on an Australian producer of automotive leather. The panel affirmed the U.S. position that the recipient's repayment of a small prospective portion of the grant was insufficient to satisfy the WTO requirement that the subsidy be withdrawn. At issue was a grant of 30 million Australian dollars that violates WTO subsidy rules because it was contingent on export performance.

The United States and Australia continue to discuss ways Australia can address the issue of compliance in accordance with the WTO DSB Panel Report. We are aiming to resolve this matter in an expeditious and satisfactory manner.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

In general, Australia provides sound intellectual property protection, including for copyrights, patents, trademarks, designs and integrated circuits, and plant breeders' rights. However, the United States is concerned with the recent Australian minimalist approach toward intellectual property protection in several important areas. We have made these concerns known to the Australian Government on numerous occasions.

Not until April 1998 did Australia begin a regime to protect test data submitted to regulatory authorities for marketing approval of pharmaceuticals. During the same year it enacted legislation to provide the same level of protection for agricultural chemicals and veterinary medicine. This regime is a minimalist one, providing protection only for new chemical compounds. No protection is

provided for new uses or new formulations for existing compounds.

In 1998 Australia passed legislation to allow parallel importation of sound recordings and effective January 1, 2000 for branded goods, such as clothing, footwear, toys, and packaged food. The Government of Australia is also considering the removal of parallel import protection for additional copyrighted works including software, electronic games and gaming equipment.

Steadily growing parallel importation of DVDs is of increasing concern to the motion picture industry. The Australian government has not updated its laws to impose stiffer fines on pirated goods in general. U.S. industry has seen measurable losses as a result. For example, since 1997, the number of pirated VCDs seized in Australia has increased by 300 percent and is now believed to control two percent of the video market in Australia.

The Australian Copyright Act, its interpretation by Australian courts in certain instances, and the position taken by the Australian Federal Police not to pursue criminal prosecution where civil remedies are available, has created costly and burdensome obstacles to the enforcement of intellectual property rights against piracy. The civil remedies available have not proven an effective deterrent to piracy.

During August 1999, the Australian Parliament enacted legislation that allows for software decompilation under certain conditions. The U.S. Government has expressed serious concerns about the scope of this proposal and its potential to result in significant copyright infringement.

U.S. copyright interests have stressed deep concern about the digital agenda legislation that the Australian government plans to report out in April for a vote sometime this year. The industry is concerned that the legislation which the Australian Government is proposing would allow for unfettered worldwide trafficking in devices and services aimed at hacking through

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encryption, password protection and other technologies copyright owners use to manage access to and use of their works. The United States has been seeking to convince the Australians of the potential perils of this “loophole” and will continue to seek the government’s cooperation in this matter.

INVESTMENT BARRIERS

All potential foreign investors in Australia are required to submit to a screening process for investment approval. Application of Australia’s foreign investment law provides discretion for the government to deny specific foreign investment based on “national interest.” Australia’s commitments under the GATS Agreement of the WTO are limited as a result of Australia’s screening program.

OTHER BARRIERS

Commodity Boards and Agricultural Support

The export of wheat, rice and sugar remains under the exclusive control of commodity boards. The privatization of the Australian Wheat Board (AWB) in July 1999 saw its export controls transferred to the Wheat Export Authority with veto rights over bulk export requests retained by the grower-owned former subsidiary of the AWB, AWB (International) Ltd. A review of wheat export arrangements is to be conducted during 2000. The Queensland Sugar Corporation maintains its exclusive authority over exports of sugar from Queensland, the Australian state that exports almost all Australian sugar. The New South Wales Rice Board controls both exports and the domestic marketing of rice for the state of New South Wales, Australia’s chief rice-exporter.

While domestic marketing of barley has been deregulated, the export monopoly administered by the Australian Barley Board has been extended until 2001. Approximately 95 percent of dairy exports are made by the private sector and about five percent by an arm of the Australian Dairy Corporation. Australia terminated its export support payment scheme

for dairy producers in 1995, replaced by a new internal support program. The Australian government has indicated its willingness to provide a structural adjustment package to dairy producers when the internal support program terminates on June 30, 2000.